

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:SWD:PNX:TL-N-6088-99-LO
JWDuncan

date: DEC 22 1997 *[Signature]*
to: Chief, Examination Division, Southwest District
Attn: William Kennedy
from: District Counsel, Southwest District, Phoenix

subject: [REDACTED]
Correction of Incorrect Estimate of K-1 Amounts

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

The Office of Chief Counsel Field Service Division has commented on our prior advisory memorandum, and has asked that we modify the rationale behind our stated conclusion. The Field Service Division wants us to clarify that the Office of Chief Counsel takes the position that a correction of an estimated K-1 amount is a partnership item. It is an "item required to be taken into account for the partnership's taxable year" under I.R.C. § 6231(a)(3), and it is the "partner's share of partnership items". See Treas. Reg. § 301-6231-(a)(3)-1(a)(1).

Corrections of an estimated K-1 amount nonetheless fall out of the TEFRA provisions and can be corrected if the statute of limitations for the partner's return is open under I.R.C. § 6501.


Pursuant to I.R.C. § 6222(c), the correction of the K-1 amount on the partner's return, which makes the K-1 amount consistent with the amount shown on the TEFRA partnership return, may be computationally assessed without resorting to a partnership proceeding described under I.R.C. § 6225, unless the taxpayer files a "notice of inconsistent treatment." The "notice of inconsistent treatment" is required by I.R.C. § 6222(b).

Chief Counsel takes the position that I.R.C. § 6501 is the controlling period of limitations for making an assessment, whether of a partnership item or non-partnership item. Therefore, the Service can adjust the partner's K-1 for a computational correction by relying upon the partner's open statute of limitations under § 6501. This position has not been tested in the courts, so that we ask that you notify our office if your taxpayer challenges whether I.R.C. § 6501 is the controlling statute of limitations.

If you have any questions regarding the above or need additional advice, please contact me at (602) 207-8052.

DAVID W. OTTO
District Counsel

By:



JOHN W. DUNCAN
Attorney

Office of Chief Counsel
Internal Revenue Service

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ISSUE

What are the procedures for correcting a taxpayer's incorrect estimate of K-1 amounts?

CONCLUSION

Because such items are not partnership items, the adjustments can be made so long as the taxpayer/partner's taxable year is still open. If the taxpayer does not agree to such changes, the matter should be coordinated with Counsel.

FACTS

The taxpayer estimated partnership income for [REDACTED] and [REDACTED] due to its not receiving K-1's prior to the due date for the taxpayer's return. The taxpayer underestimated net income from the partnership by about \$ [REDACTED] for [REDACTED], and \$ [REDACTED] for [REDACTED]. Although the taxpayer initially indicated that the [REDACTED] K-1 might have overstated income, it now agrees that the K-1 amounts for [REDACTED] and [REDACTED] were correct. The taxpayer has not filed notices of inconsistent treatment for either of these years. You obtained consents to extend the statute of limitations for [REDACTED] and [REDACTED]. (b)(7)a, (b)(7)e [REDACTED]

[REDACTED]. You have asked how you may proceed with your proposed adjustments.

DISCUSSION

We are advised that while an argument may exist that the disputed amounts might constitute partnership items, Counsel strongly believes that they are not partnership items. Thus, if the limitations period for the taxpayer remains open, the adjustment can be made whether or not the TEFRA limitations period has run.

The above advice applies to situations in which the taxpayer has not provided a notice of inconsistent treatment described at I.R.C. § 6222(b). Where a taxpayer files such a notice, the procedures of § 6225 apply to restrict when and how the Service can make such adjustments. Due to the nature of this issue, we expect that a CEP taxpayer would not ordinarily provide a notice of inconsistent treatment for an estimated K-1 amount. Such taxpayer would likely correct such item if an amended return is subsequently filed, or as in the present case, expect such amount to constitute an adjustment during the examination. If in fact this issue arises where a taxpayer has filed a notice of inconsistent treatment, we request that you obtain our involvement in the issue.

We caution you that if a taxpayer disputes this adjustment, you should obtain Counsel involvement as early as possible. If a taxpayer claims that an expired TEFRA statute should prohibit this type of adjustment, we want to become involved to ensure that the Service is in the best possible position to litigate the issue.

(b)(7)a, (b)(7)e


, (b)(7)a, (b)(7)e

, (b)(7)a, (b)(7)e

Please note that we consider the opinions expressed in this memorandum to be significant large case advice. We therefore request that you refrain from acting on this memorandum for ten (10) working days to allow the Assistant Chief Counsel (Field Service) an opportunity to comment. If you have any questions regarding the above, please contact me at (602) 207-8052.

DAVID W. OTTO
District Counsel

By:


JOHN W. DUNCAN
Attorney